MEMORANDUM OF LAW

DATE: June 14, 1994

TO: Bruce Herring, Deputy City Manager

FROM: City Attorney

SUBJECT: Workers' Compensation Industrial Medical Services Contract

By letter dated June 7, 1994, Ann Smith, attorney for the Municipal Employees Association ("MEA"), states that the City is prohibited from entering into a contract with a Health Care Organization ("HCO") unless authorized to do so by mutual agreement between MEA and the City. Ms. Smith cites Labor Code section 4600.3(b) as authority for this assertion. You have asked if this is a correct interpretation of the statute.

For simplicity, this memorandum will refer only to MEA, however, it should be noted that the provisions of all Labor Code sections referred to in this memorandum are applicable to all four of the City's recognized bargaining units. The section cited by Ms. Smith was added to the Labor Code in 1993 as part of Assembly Bill ("A.B.") 110 (Peace). It is but one small part of an exhaustive workers' compensation reform package. Pursuant to Labor Code section 4600.3, an HCO is a health care service plan certified by the Commissioner of Corporations to provide industrial medical services. An HCO is subject to requirements and limitations defined in detail throughout A.B. 110. To the extent that the City elects to contract services with an HCO, Ms. Smith's assertion is correct, the City must meet and confer on the selection.

Additionally, if the City chooses to contract with an HCO, two HCOs must be made available to employees. The selection requirement allows employees some flexibility because the provisions of Labor Code section 4600.3 grant the City extended periods of control over the treatment process. Currently, pursuant to Labor Code section 4600, employees may select their own medical provider after thirty (30) days of treatment by the City provider. Use of an HCO allows the City to retain the services of its selected provider for periods ranging from ninety (90) to three hundred and sixty five (365) days. Under the HCO plan, employees may select their own physician only at the end of

the City controlled treatment period.

However, Labor Code section 4600.3(b) cannot be read in a vacuum. Labor Code section 4600.3(f) provides: "Nothing in this section or Section 4600.5 shall be construed to prohibit a self-insured employer, a group of self-insured employers, or insurer from engaging in any activities permitted by Section 4600." Thus, an employer is not compelled to utilize an HCO. Pursuant to the statute, the employer may, at its option, continue to provide industrial medical services under the provisions of Labor Code section 4600. This statute provides, in pertinent part, that the employer is responsible for:

> Medical, surgical, chiropractic, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, including artificial members, which is reasonably required to cure or relieve from the effects of the injury shall be provided by the employer. In the case of his or her neglect or refusal seasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment. After 30 days from the date the injury is reported, the employee may be treated by a physician of his or her own choice or at a facility of his or her own choice within a reasonable geographic area.

As noted previously, the provisions of Labor Code section 4600 give the employer less control over the treatment process. The employee may opt to select his or her medical provider after only thirty (30) days. Because the individual employee is given significant control over his or her treatment, the meet and confer provision of Labor Code section 4600.3 is not found in Labor Code section 4600.

The City has elected to continue to provide industrial medical services under the auspices of Labor Code section 4600. However, even if the City elected to use an HCO, it could not do so at this time as no HCOs have yet been certified by the Commissioner of Corporations. The Workers' Compensation Health Care Provider Organization Act, Labor Code sections 5150 et seq., (also part of A.B. 110) which details the requirements necessary for an organization to become a certified HCO provides:

Section 5210. Operative date and implementation of part

This part shall become operative August 1, 1994. However, this part shall not be implemented unless the Legislature appropriates money to the Department of Corporations for costs related to the department's initial duties in authorizing workers' compensation health care provider organizations.F (Added by Stats. 1993, c. 121 (A.B. 110), ' 54, eff. Jul 1993.)

No monies have yet been appropriated by the Legislature thus no HCOs have yet been certified. At this point, it is not certain when, or if, monies will be appropriated. However, until the appropriation is made, the HCO option of Labor Code section 4600.3 is not available to employers.

CONCLUSION

The City is not bound by the interpretations of Labor Code section 4600.3 as argued by the MEA. The provisions of that section cannot become effective until the certification process becomes operative. As noted above, this will not occur until August 1, 1994. Additionally, after August 1, 1994, there is no indication as to when the certification process will actually begin or how long it will take to become viable. Thus, no meet and confer process is mandated at this time. Finally, even after the provisions of Labor Code section 4600.3 are fully operational, the City may still elect to provide industrial medical services under the provisions of Labor Code section 4600. Should the City opt to continue industrial medical services under Labor Code section 4600, the meet and confer provision of Labor Code section 4600.3 is not applicable to the provider selection process.

If you have any further questions, please give me a call.

JOHN W. WITT, City Attorney
By
Sharon A. Marshall
Deputy City Attorney

SAM:mrh:341.1(x043.2)
cc D. Cruz Gonzalez
ML-94-53

TOP
TOP